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Citation: Zulker Nayeen, M. S. ORCID: 0000-0001-5242-8728 (2019). Three dimensions of access to justice for achieving SDGs. The Daily Star,

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The Daily Star

Friday, "March 22, 2019"

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12:00 AM, March 19, 2019 / LAST MODIFIED: 12:00 AM, March 19, 2019

RIGHTS ADVOCACY

Three dimensions of access to justice for achieving SDGs



Sekander Zulker Nayeen

Goal sixteen of Sustainable Development Goals (SDGs) pledges 'ensuring access to justice for all' as a target to be achieved. The principle of rule of law requires that any person with a bona fide reasonable legal claim must have an effective means of having that claim considered. To have any claim considered people must have an easy access to justice services. Whether any country is providing access to justice is determined through the procedures of reaching the justice mechanisms by the common people. In

our country, justice-seekers tussle with some economic, social and institutional barriers in accessing formal judicial system. Widening access to justice depends upon extending some facilities to the litigants and empowering them to overcome those barriers.

However, simply providing easy access to justice mechanism does not effectively define the notion of 'access to justice'. The terms 'justice mechanism' and 'justice' clearly convey distinctive senses. The first one denotes 'judicial mechanism of a country' whereas the later one indicates 'getting remedy from that judicial mechanism'. Accessing to justice system does not automatically ensure getting the remedy from judicial mechanism. Some scholars e.g. Professor Dame Hazel Genn and Mauro Cappelletti added providing individually and socially justified decision or just outcomes by the judicial mechanisms as another ingredient of access to justice. Though it is difficult to define what outcomes of judicial decision would be considered just outcomes, nowadays justice demand requires that the outcomes must be socially and individually just. The word 'socially and individually just' indicates that the judicial decision would be the desired and expected one which would materialise the maxim 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.' The people of the society and the individual litigant would realise that justice has been done. Such realisation denotes the people's prediction of judicial outcome which is popularly known as predictability of court's decision. It means the possibility to predict ex ante how the law will be applied by the court ex post. The predictability of court decisions is influenced by the uniformity in the application of the law i.e. the equal treatment of similar disputes, and the ease with which court decisions can be accessed and known. Predictability of judicial decision has some positive impact. For example, when the parties are able to predict with sufficient precision what will be the decision of the higher court, it will be in their interest to accept the lower court's decision or to find an out-of-court settlement. Therefore, access to justice forwards two-folds meaning, one, access to justice mechanism; two, getting just outcome or predictable outcome from that mechanism.

But I think this does not suffice the definition of access to justice. A timely disposal of cases is also another dimension of access to justice. Accessing to justice system does not automatically ensure the litigants' cherished justice. If they get just outcome in just time, it would be the effective access to justice because it is a settled principle that 'justice delayed is justice denied'. As a judge, I have personal experience of disposing some civil suits after 30-40 years of their institution. The parties who had got access to justice mechanisms through instituting those suits died long ago without getting their desired justice. They got access to justice system but not to justice in true sense because of delayed disposal of cases. A reasonable length of trial is an important characteristic of good judicial performance and it is related to other crucial measures of performance such as confidence in the justice system. A reasonable trial length is important to achieve good performance in other dimensions, including access to the justice service

and predictability of decisions. That is why, timely disposal of cases has been considered as the third dimension of access to justice.

However, as SDGs are not legally binding, the governments are expected to take ownership and establish national frameworks for its plan of actions, follow-up, and review of the progress made in implementing the Goals within 2030. Thus, implementation and success will rely on countries' own assessment of deficiencies and their sustainable development policies to address those. In Bangladesh, National Legal Aid Services Organisation is working on the typical dimension of access to justice targeting to increase the recipients of legal aid to 33000 and 37000 in 2019 and 2020 respectively. It is unfortunate that neither the UN nor Bangladesh has yet determined clear strategies to develop any indicators to monitor the progress of the target- Access to Justice. But for achieving SDGs, a holistic policy approach is desirable to address all of the aforementioned three dimensions of Access to Justice.

The writer is a Joint District Judge, Tangail Jude Court.

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